

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

-----X
WANDA MORALES,

Plaintiff,

-against-

THE CITY OF NEW YORK,

Defendant.
-----X

Index No. :

SUMMONS

Plaintiff designates
BRONX COUNTY
as the place of trial

The basis of venue is
PLAINTIFF'S RESIDENCE

TO THE ABOVE NAMED DEFENDANT:

YOU ARE HEREBY SUMMONED to answer the complaint in this action, and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's Attorneys within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after service is complete if this summons is not personally delivered to you with the State of New York); and in case of your failure to appear or answer, judgement will be taken against you by default for the relief demanded in the complaint.

Dated: New York, New York
October 1, 2019

BY: 

John J. Meehan, Esq.
JOSEPH & NORINSBERG, LLC
Attorneys for Plaintiff
225 Broadway, Suite 2700
New York, N.Y. 10007
(212) 227-5700

TO: THE CITY OF NEW YORK
150 William Street
New York, New York 10038

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX-----X
WANDA MORALES,

Index No.

Plaintiff,

-against-

THE CITY OF NEW YORK,

Defendant.
-----X**VERIFIED COMPLAINT****JURY TRIAL DEMANDED**

Plaintiff WANDA MORALES, by her attorney JOSEPH & NORINSBERG, LLC, brings this action against defendant THE CITY OF NEW YORK, alleging, on personal knowledge as to her, and on information and belief as to all other matters, as follows:

JURY DEMAND

Plaintiff demands a trial by jury on all issues so triable.

JURISDICTION AND VENUE

1. This Court has personal jurisdiction over the defendant pursuant to CPLR §§ 301 and 302, in that the defendant resides in New York.
2. This Court has jurisdiction over this action because the amount of damages Plaintiff seeks exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction.
3. Venue for this action is proper in the County of Bronx, pursuant to CPLR § 503, in that the plaintiff is a resident of the County of Bronx at the time of the commencement of this action.

CHILD VICTIMS ACT

4. Each of Plaintiff's causes of action are timely pursuant to the Child Victims Act that was enacted on February 14, 2019. Plaintiff alleges that the defendant committed intentional or negligent acts or omissions which resulted in Plaintiff suffering physical, psychological or other

injuries or conditions as a direct and proximate result of conduct which constitutes a sexual offense committed against a child less than eighteen years of age, as defined in New York Penal Law § 130. This action, moreover, has been filed not earlier than six months after, and not later than one year and six months after, the effective date of the newly added CPLR § 214-g.

PARTIES

5. Plaintiff WANDA MORALES is an individual currently residing the County of The Bronx, in the City and State of New York.

6. Defendant CITY OF NEW YORK (“CITY”) was at all relevant times and still is a municipal corporation duly organized and existing under and by virtue of the laws of the State of New York.

7. At all times hereinafter mentioned, the defendant CITY OF NEW YORK maintained the Administration of Children’s Services (“ACS”), which was formerly known as the Bureau of Child Welfare (“BCW”), whose members were employees of the defendant CITY OF NEW YORK.

8. At all times hereinafter mentioned, defendant CITY OF NEW YORK, authorized, supervised, administered, and oversaw all aspects of the hiring, supervising, firing, training and administration at BCW and had a duty to safeguard the welfare, security, safety, wellbeing and health of the students such as the plaintiff, during the years she was a ward of the CITY OF NEW YORK.

9. At all times hereinafter mentioned, defendant CITY OF NEW YORK, authorized, supervised, administered, and oversaw all aspects of the hiring, supervising, firing, training and administration at BCW, including the foster parents assigned to provide housing and parental guidance through ACS and its precursor, the Bureau of Child Welfare, including Andre Colon (“Colon”).

10. At all times hereinafter mentioned, defendant CITY OF NEW YORK developed rules, regulations, guidelines, and procedures, for the selection of foster parents.

11. As set forth herein, defendant CITY OF NEW YORK failed to follow its rules, regulations, guidelines, and procedures, for the selection of foster parents.

STATEMENT OF FACTS

12. Plaintiff WANDA MORALES grew up as a ward of defendant CITY OF NEW YORK.

13. Plaintiff WANDA MORALES was abandoned as a young child by her biological mother, and left at the doorstep of a neighbor.

14. Ms. Morales is known as a “foundling,” with an approximate date of birth of May 21, 1964. (Ex. A, Report of Foundling).

15. The neighbor handed Ms. Morales over to the Bureau of Child Welfare, the precursor to ACS.

16. Ms. Morales was then placed in an orphanage, the New York Foundling Hospital.

17. From the orphanage, Ms. Morales was placed in foster care, in the home of Andre Colon.

18. From the age of five (5) until she left the home at age ten (10), Colon brutally raped, sodomized and sexually molested plaintiff WANDA MORALES.

19. At the age of eight (8), plaintiff WANDA MORALES had the courage and fortitude to actually tell her social worker about the abuse perpetrated by Andre Colon.

20. With specificity, plaintiff WANDA MORALES pointed to the parts on her body that Colon had touched, and drew a picture, using crayons, about what Colon had done to her, as per the instructions of her social worker.

21. Plaintiff WANDA MORALES used a red crayon to draw a pool of blood in the bed

in this drawing.

22. The case worker promised plaintiff WANDA MORALES that she would protect her and make sure this never happened again.

23. Notwithstanding this promise, and despite plaintiff's cry for help and her graphic description of Colon's sexual abuse, Ms. Morales was not taken from the home for another *two years*.

24. In those two years, Ms. Morales was repeatedly raped, sodomized, and sexually molested by Colon.

25. Defendant CITY knew, and/or reasonably should have known, and/or knowingly condoned, and/or covered up, the inappropriate and unlawful sexual activities of Colon who repeatedly sexually abused Plaintiff.

26. Defendant CITY had the responsibility to manage, supervise, control and/or direct the staff, employees, and mentors who served as foster parents, and specifically had a duty not to aid known sexual predators such as Colon by assigning, maintaining, and/or appointing them to positions with access to minors.

27. Defendant CITY had a duty to Plaintiff to ensure that ACS did not offer opportunities for known sexual predators to approach and assault vulnerable children. Defendant CITY knew, and/or should have known, that Colon used his position as a foster parent to harm minor children, including Plaintiff, and to form an acquaintance that could be, and was, used to provide opportunities for sexual abuse.

28. In complete dereliction of its duties, defendant CITY allowed plaintiff to live with Colon, even after plaintiff's graphic description of how Colon raped, sodomized, and sexually molested her.

29. In complete dereliction of its duties, CITY would allow Colon to continue to serve

as a foster parent.

30. In complete dereliction of its duties, CITY would allow Colon to continue to serve as the foster parent of plaintiff WANDA MORALES for another two years after she had explicitly informed BCW of her abuse.

31. Plaintiff suffered severe personal physical and psychological injuries and damages as a result of Defendant's actions, as well as other damages related thereto, and continues to suffer from these damages to this day.

32. As a direct result of Defendant's conduct described herein, Plaintiff suffered and will continue to suffer great pain of mind and body, severe and permanent emotional distress, and physical manifestations of emotional distress. Plaintiff was prevented from obtaining the full enjoyment of life; has incurred and will continue to incur expenses for medical and psychological treatment, therapy, and counseling; and has incurred and will continue to incur loss of income and/or loss of earning capacity.

FIRST CAUSE OF ACTION
(Negligent Hiring/Retention/Supervision/Direction)

33. Plaintiff repeats and realleges each and every allegation set forth in the above paragraphs as if fully set forth herein.

34. Defendant CITY had a duty to all wards of the City to New York to ensure that its minor children would be physically safe while in the presence of the counselors, staff, and foster parents employed by defendant CITY. Defendant entered into an express and/or implied duty to provide that when Plaintiff was a minor and left to the city, Plaintiff would be kept safe and that that counselors, staff, and/or foster parents would not sexually abuse Plaintiff.

35. Defendant CITY owed a duty of care to all minor persons, including Plaintiff, who was likely to come in contact with its employees, agents, and foster parents or were under the

supervision of their employees, agents, and foster parents to ensure that their employees, agents, coaches, and foster parents did not use their assigned positions to injure minors by sexual assault, sexual abuse, or sexual contact in violation of the laws of the State of New York, specifically Article 130 of the New York Penal Law.

36. Defendant CITY, knew or should have known, of Colon's propensity for the conduct which caused Plaintiff's injuries prior to, or about the time of, the injuries' occurrence.

37. The sexual abuse of children by adults, including staff, counselors, or foster parents, is a foreseeable result of negligence.

38. Colon sexually assaulted, sexually abused and/or had sexual contact with Plaintiff while working in his capacity as a foster parent for defendant CITY.

39. Defendant CITY, negligently recruited, retained, directed, and supervised Colon, as it knew or should have known that Colon posed a threat of sexual abuse to children, including Plaintiff herein.

40. Defendant CITY negligently continued to employ Colon as a foster parent, even after it was made aware by the plaintiff that Colon had committed repeated acts of sexual abuse on her.

41. Defendant CITY was negligent in failing to properly supervise Colon.

42. Defendant CITY was negligent in failing to do a full and complete background check on Colon.

43. Defendant CITY was negligent in failing to properly vet Colon for his role as a foster parent.

44. Defendant CITY was negligent in failing to follow its on rules, regulations, guidelines, and procedures in selecting foster parents.

45. At all times material hereto, defendant CITY, was willful, wanton, malicious,

reckless and/or outrageous in its disregard for the rights and safety of Plaintiff, and demonstrated such moral turpitude as to cause substantial harm to the community-at-large as well as Plaintiff, and, as such, Defendant's conduct gives rise to punitive damages.

46. As a direct and proximate result, Plaintiff has suffered and will continue to suffer the injuries described herein.

47. By reason of the foregoing, the defendant CITY, is liable to the Plaintiff, for compensatory damages, and punitive damages, together with interest and costs.

SECOND CAUSE OF ACTION
(Negligence/Gross Negligence)

48. Plaintiff repeats and realleges each and every allegation set forth in the above paragraphs as if fully set forth herein.

49. At all times material hereto, with regard to the allegations contained herein, Colon was under the supervision, direction and/or control of defendant CITY.

50. Defendant CITY, owed Plaintiff, at all relevant times, a minor ward of the state, a duty to protect her from Colon's sexual deviancy and the consequential damages, both prior to and/or subsequent to the abuser's misconduct.

51. Defendant CITY, knew, or was negligent in not knowing, Colon posed a threat of sexual abuse to children (including Plaintiff).

52. The acts of Colon were undertaken, and/or enabled by, and/or during the course, and/or within the scope of his appointment, assignment, and/or agency with defendant CITY.

53. Defendant CITY's willful, wanton, grossly negligent and/or negligent act(s) of commission and/or omission, resulted directly and/or proximately in the damage set forth herein at length.

54. Defendant CITY gave improper or ambiguous orders or failed to make proper

regulations, and/or employed improper persons or instrumentalities in work involving risk of harm to others; failed adequately to supervise the activities of Defendant's employees, volunteers, and mentors; permitted, and/or intentionally failed and/or neglected to prevent, negligent and/or grossly negligent conduct and/or allowed other tortious conduct by persons, whether or not their servants and/or agents and/or employees, with instrumentalities under their control; and allowed the acts of omission and/or commission and/or any or all of the allegations set forth in this Complaint, to occur.

55. At all times material hereto, defendant CITY's actions and omissions were willful, wanton, malicious, reckless, and outrageous in their disregard for the rights and safety of Plaintiff, and amounted to conduct equivalent to criminality. At all times material hereto, moreover, defendant CITY demonstrated such moral turpitude as to cause substantial harm to the community-at-large as well as Plaintiff, and, as such, Defendant's conduct gives rise to punitive damages.

56. As a direct and/or indirect result of said conduct, Plaintiff has suffered the injuries and damages described herein.

57. By reason of the foregoing, defendant CITY is liable to the Plaintiff, for compensatory damages, and punitive damages, together with interest and costs.

THIRD CAUSE OF ACTION
(Breach of Non-Delegable Duty)

58. Plaintiff repeats and realleges each and every allegation set forth in the above paragraphs as if fully set forth herein.

59. Plaintiff, when she was a minor, was placed in the care and supervision of the defendant CITY for the purposes of, *inter alia*, providing plaintiff with a safe environment in which to live, learn, and grow. There existed a non-delegable duty of trust between Plaintiff and defendant CITY.

60. Plaintiff was a vulnerable minor when placed within the care of the defendant CITY.

61. As a consequence, Defendant CITY was in the best position to prevent the sexual abuse of Plaintiff, to learn of that sexual abuse of Plaintiff and stop it, and to take prompt steps to provide that Plaintiff received timely therapy to address the harm she suffered resulting from their sexual abuse. Such prompt steps would have mitigated the extent of lifetime suffering Plaintiff has endured.

62. By virtue of the fact that Plaintiff was sexually abused as a minor child entrusted to the care of defendant CITY, Defendant breached its non-delegable duty to Plaintiff.

63. At all times material hereto, Colon was under the supervision, direction and/or control of defendant CITY.

64. As a direct result of said conduct, Plaintiff has suffered injuries and damages described herein.

65. By reason of the foregoing, defendant CITY is liable to the Plaintiff for compensatory damages, and punitive damages, together with interest and costs.

FOURTH CAUSE OF ACTION
(Breach of Fiduciary Duty)

66. Plaintiff repeats and realleges each and every allegation set forth in the above paragraphs as if fully set forth herein.

67. While she was a minor, Plaintiff was entrusted to the control and supervision of defendant CITY. During the times that Plaintiff was entrusted to Colon, Colon was under the supervision and control of defendant CITY.

68. There existed a fiduciary relationship of trust, confidence, and reliance between Plaintiff and defendant CITY. This relationship was based on the entrustment of the Plaintiff while

she was a minor child to the care and supervision of the defendant. This entrustment of the Plaintiff to the care and supervision of the defendant, while the Plaintiff was a child, required defendant CITY to assume a fiduciary relationship and to act in the best interests of the Plaintiff and to protect her due to her infancy and vulnerability.

69. Pursuant to their fiduciary relationship, defendant CITY was entrusted with the well-being, care, and safety of Plaintiff.

70. Pursuant to their fiduciary relationship, defendant CITY assumed a duty to act in the best interests of Plaintiff.

71. Defendant CITY breached its fiduciary duties to Plaintiff.

72. At all times material hereto, defendant CITY, was willful, wanton, malicious, reckless and/or outrageous in its disregard for the rights and safety of Plaintiff, and demonstrated such moral turpitude as to cause substantial harm to the community-at-large as well as Plaintiff, and, as such, defendant's conduct gives rise to punitive damages.

73. As a direct result of said conduct, Plaintiff has suffered injuries and damages described herein.

74. By reason of the foregoing, the defendant CITY is liable to the Plaintiff for compensatory damages, and punitive damages, together with interest and costs.

FIFTH CAUSE OF ACTION
(Negligent Infliction of Emotional Distress)

75. Plaintiff repeats and realleges each and every allegation set forth in the above paragraphs as if fully set forth herein.

76. As described above, the actions of defendant CITY, their predecessors and/or successors, agents, servants and/or employees were conducted in a negligent and/or grossly negligent manner.

77. Defendant CITY's actions endangered Plaintiff's safety and caused her to fear for her own safety.

78. As a direct and proximate result of defendant CITY's actions and/or inactions, which included but were not limited to, negligent and/or grossly negligent conduct, Plaintiff suffered the severe injuries and damages described herein; including but not limited to, severe mental and emotional distress, which continue to afflict her to this day.

79. By reason of the foregoing, the defendant CITY is liable to the Plaintiff, for compensatory damages, and punitive damages, together with interest and costs.

SIXTH CAUSE OF ACTION
(Breach of Duty *in Loco Parentis*)

80. Plaintiff repeats and realleges each and every allegation set forth in the above paragraphs as if fully set forth herein.

81. While she was a minor, Plaintiff was entrusted to the control and supervision of defendant CITY. During the times that Plaintiff was entrusted to defendant CITY, Colon, was under the supervision and control of defendant CITY. Defendant CITY owed a duty to children entrusted to them (including Plaintiff) to act *in loco parentis* and to prevent foreseeable injuries.

82. Defendant CITY breached its duty to act *in loco parentis*.

83. At all times material hereto, defendant CITY was willful, wanton, malicious, reckless, negligent, grossly negligent and/or outrageous in its disregard for the rights and safety of Plaintiff, and demonstrated such moral turpitude as to cause substantial harm to the community-at-large as well as Plaintiff, and, as such, its conduct gives rise to punitive damages.

84. As a direct result of defendant CITY's conduct, Plaintiff has suffered the injuries and damages described herein, and continues to suffer from such damages to this day.

85. By reason of the foregoing, defendant CITY is liable to Plaintiff for compensatory

damages and for punitive damages, together with interest and costs.

WHEREFORE, Plaintiff WENDY MORALES hereby demands judgment against the defendant on each cause of action as follows:

- A. Awarding compensatory damages in an amount to be proven at trial, but, in any event, in an amount that exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction over this matter;
- B. Awarding punitive damages to the extent permitted by law;
- C. Awarding costs and fees of this action, including attorneys' fees to the extent permitted by law;
- D. Awarding prejudgment interest to the extent permitted by law; and
- E. Awarding such other and further relief as to this Court may seem just and proper.

Dated: New York, New York
October 1, 2019

BY: 

John J. Meehan, Esq.
JOSEPH & NORINSBERG, LLC
Attorneys for Plaintiff
225 Broadway, Suite 2700
New York, N.Y. 10007
(212) 227-5700

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SUMMONS AND COMPLAINT

JOSEPH & NORINSBERG, LLC

John J. Meehan, Esq.
Attorneys for Plaintiff
225 Broadway, Suite 2700
New York, NY 10007
(212) 227-5700